

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

SHIMSHON WEXLER,

Plaintiff,

v.

**AMERICAN EXPRESS
CENTURION BANK, EQUIFAX
INFORMATION SERVICES, LLC
and EXPERIAN INFORMATION
SOLUTIONS, INC.,**

Defendants.

CASE NO.: 1:14-cv-1853

DEFENDANT EXPERIAN’S ANSWER AND AFFIRMATIVE DEFENSES

NOW COMES defendant Experian Information Solutions, Inc.

(“Experian”), by its undersigned counsel, and in answer to the Complaint, states as follows:

INTRODUCTION AND BACKGROUND FACTUAL INFORMATION

1. In response to Paragraph 1 of the Complaint, Experian admits that Plaintiff’s Complaint purports to state claims under the Fair Credit Reporting Act (“FCRA”) and Georgia’s Fair Business Practices Act. Experian denies that it has violated the FCRA or Georgia’s Fair Business Practices Act and denies that it is liable to Plaintiff for any alleged damages.

2. In response to Paragraph 2 of the Complaint, Experian is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, on that basis, denies, generally and specifically, each and every allegation contained therein.

3. In response to Paragraph 3 of the Complaint, Experian is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, on that basis, denies, generally and specifically, each and every allegation contained therein.

4. In response to Paragraph 4 of the Complaint, Experian is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, on that basis, denies, generally and specifically, each and every allegation contained therein.

5. In response to Paragraph 5 of the Complaint, Experian is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, on that basis, denies, generally and specifically, each and every allegation contained therein.

6. In response to Paragraph 6 of the Complaint, Experian is without knowledge or information sufficient to form a belief as to the truth of the

allegations contained therein and, on that basis, denies, generally and specifically, each and every allegation contained therein.

7. In response to Paragraph 7 of the Complaint, Experian is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, on that basis, denies, generally and specifically, each and every allegation contained therein.

8. In response to Paragraph 8 of the Complaint, Experian is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, on that basis, denies, generally and specifically, each and every allegation contained therein.

9. In response to Paragraph 9 of the Complaint, Experian is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, on that basis, denies, generally and specifically, each and every allegation contained therein.

10. In response to Paragraph 10 of the Complaint, Experian is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, on that basis, denies, generally and specifically, each and every allegation contained therein.

11. In response to Paragraph 11 of the Complaint, Experian is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, on that basis, denies, generally and specifically, each and every allegation contained therein.

12. In response to Paragraph 12 of the Complaint, Experian is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, on that basis, denies, generally and specifically, each and every allegation contained therein.

13. In response to Paragraph 13 of the Complaint, Experian is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, on that basis, denies, generally and specifically, each and every allegation contained therein.

14. In response to Paragraph 14 of the Complaint, Experian is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, on that basis, denies, generally and specifically, each and every allegation contained therein.

15. In response to Paragraph 15 of the Complaint, Experian is without knowledge or information sufficient to form a belief as to the truth of the

allegations contained therein and, on that basis, denies, generally and specifically, each and every allegation contained therein.

16. In response to Paragraph 16 of the Complaint, Experian is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, on that basis, denies, generally and specifically, each and every allegation contained therein.

17. In response to Paragraph 17 of the Complaint, Experian is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, on that basis, denies, generally and specifically, each and every allegation contained therein.

18. In response to Paragraph 18 of the Complaint, Experian is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, on that basis, denies, generally and specifically, each and every allegation contained therein.

19. In response to Paragraph 19 of the Complaint, Experian is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, on that basis, denies, generally and specifically, each and every allegation contained therein.

20. In response to Paragraph 20 of the Complaint, Experian is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, on that basis, denies, generally and specifically, each and every allegation contained therein.

21. In response to Paragraph 21 of the Complaint, Experian is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, on that basis, denies, generally and specifically, each and every allegation contained therein.

22. In response to Paragraph 22 of the Complaint, Experian is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, on that basis, denies, generally and specifically, each and every allegation contained therein.

23. In response to Paragraph 23 of the Complaint, Experian is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, on that basis, denies, generally and specifically, each and every allegation contained therein.

24. In response to paragraph 24 of the Complaint, Experian is without knowledge or information sufficient to form a belief as to the truth of the

allegations contained therein and, on that basis, denies, generally and specifically, each and every allegation contained therein.

25. In response to Paragraph 25 of the Complaint, Experian is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, on that basis, denies, generally and specifically, each and every allegation contained therein.

26. In response to paragraph 26 of the Complaint, Experian denies, generally and specifically, each and every allegation contained therein that relates to Experian. As to the allegations in paragraph 26 of the Complaint that relate to the other defendants, Experian does not have knowledge or information sufficient to form a belief as to the truth of those allegations and, on that basis, denies, generally and specifically, each and every remaining allegation of paragraph 26 of the Complaint.

27. In response to paragraph 27 of the Complaint, Experian denies, generally and specifically, each and every allegation contained therein that relates to Experian. As to the allegations in paragraph 27 of the Complaint that relate to the other defendants, Experian does not have knowledge or information sufficient to form a belief as to the truth of those allegations and, on that basis, denies,

generally and specifically, each and every remaining allegation of paragraph 27 of the Complaint.

28. In response to paragraph 28 of the Complaint, Experian denies, generally and specifically, each and every allegation contained therein that relates to Experian. As to the allegations in paragraph 28 of the Complaint that relate to the other defendants, Experian does not have knowledge or information sufficient to form a belief as to the truth of those allegations and, on that basis, denies, generally and specifically, each and every remaining allegation of paragraph 28 of the Complaint.

29. In response to paragraph 29 of the Complaint, Experian admits that the allegations contained therein appear to set forth a portion of United States Supreme Court case law. Experian affirmatively states that the Supreme Court's *Safeco Insurance Co. of America. v. Burr* decision, 127 S. Ct. 2201 (2007), speaks for itself and, on that basis, denies any allegations of paragraph 29 inconsistent therewith.

JURISDICTION AND VENUE

30. In response to paragraph 30 of the Complaint, Experian admits that Plaintiff has alleged jurisdiction based on the Fair Credit Reporting Act, 15 U.S.C.

§§ 1681 et seq. Experian states that this is a legal conclusion which is not subject to denial or admission.

31. In response to Paragraph 31 of the Complaint, Experian admits that it is an Ohio corporation, with its principal place of business in Costa Mesa, California. Experian further admits that it is qualified to do business and does conduct business in the State of Georgia. As to the allegations in paragraph 31 of the Complaint that relate to the other defendants, Experian does not have knowledge or information sufficient to form a belief as to the truth of those allegations and, on that basis, denies, generally and specifically, each and every remaining allegation of paragraph 31 of the Complaint. Except as specifically admitted, Experian denies, generally and specifically, each and every remaining allegation of paragraph 31 of the Complaint.

32. In response to paragraph 32 of the Complaint, Experian is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, on that basis, denies, generally and specifically, each and every allegation contained therein.

33. In response to paragraph 33 of the Complaint, Experian is without knowledge or information sufficient to form a belief as to the truth of the

allegations contained therein and, on that basis, denies, generally and specifically, each and every allegation contained therein.

34. In response to Paragraph 34 of the Complaint, Experian admits that it is an Ohio corporation, with its principal place of business in Costa Mesa, California.

35. In response to paragraph 35 of the Complaint, Experian admits that it is a consumer reporting agency as defined by 15 U.S.C. § 1681a(f) and, as such, issues consumer reports as defined by 15 U.S.C. § 1681a(d).

36. In response to paragraph 36 of the Complaint, Experian is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, on that basis, denies, generally and specifically, each and every allegation contained therein.

37. In response to paragraph 37 of the Complaint, Experian is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, on that basis, denies, generally and specifically, each and every allegation contained therein.

38. In response to paragraph 38 of the Complaint, Experian is without knowledge or information sufficient to form a belief as to the truth of the

allegations contained therein and, on that basis, denies, generally and specifically, each and every allegation contained therein.

VIOLATIONS ALLEGED

COUNT I- FCRA CLAIM AGAINST EXPERIAN AND EQUIFAX

39. In response to paragraph 39, Experian incorporates by reference its responses to paragraphs 1 through 38 of the above as if fully set forth herein.

40. In response to paragraph 40 of the Complaint, Experian admits that the allegations contained therein appear to set forth a portion of the federal Fair Credit Reporting Act. Experian affirmatively states that the Fair Credit Reporting Act speaks for itself and, on that basis, denies any allegations of paragraph 40 inconsistent therewith. Except as specifically admitted, Experian denies, generally and specifically, each and every remaining allegation of paragraph 40 of the Complaint.

41. In response to paragraph 41 of the Complaint, Experian denies, generally and specifically, each and every allegation contained therein that relates to Experian. As to the allegations in paragraph 41 of the Complaint that relate to the other defendants, Experian does not have knowledge or information sufficient to form a belief as to the truth of those allegations and, on that basis, denies,

generally and specifically, each and every remaining allegation of paragraph 41 of the Complaint.

42. In response to paragraph 42 of the Complaint, Experian admits that the allegations contained therein appear to set forth a portion of the federal Fair Credit Reporting Act. Experian affirmatively states that the Fair Credit Reporting Act speaks for itself and, on that basis, denies any allegations of paragraph 42 inconsistent therewith. Except as specifically admitted, Experian denies, generally and specifically, each and every remaining allegation of paragraph 42 of the Complaint.

43. In response to paragraph 43 of the Complaint, Experian denies, generally and specifically, each and every allegation contained therein that relates to Experian. As to the allegations in paragraph 43 of the Complaint that relate to the other defendants, Experian does not have knowledge or information sufficient to form a belief as to the truth of those allegations and, on that basis, denies, generally and specifically, each and every remaining allegation of paragraph 43 of the Complaint.

44. In response to paragraph 44 of the Complaint, Experian denies, generally and specifically, each and every allegation contained therein that relates to Experian. As to the allegations in paragraph 44 of the Complaint that relate to

the other defendants, Experian does not have knowledge or information sufficient to form a belief as to the truth of those allegations and, on that basis, denies, generally and specifically, each and every remaining allegation of paragraph 44 of the Complaint. Further, Experian denies that Plaintiff is entitled to any damages or other forms of relief as it relates to Experian set forth in the sentence beginning with "WHEREFORE" following paragraph 44, or any of its subparts 1-3. As to the allegations and requests for relief and damages that relate to the other defendants, Experian does not have knowledge or information sufficient to form a belief as to the truth of those allegations and corresponding requests for relief and, on that basis, denies, generally and specifically, each and every remaining allegation and request for relief contained within the sentence beginning with "Wherefore" following paragraph 44, or any of its subparts 1-3 in the Complaint.

COUNT II - FCRA CLAIM AGAINST AMEX

Experian incorporates by reference its responses to paragraphs 1 through 44 as if fully set forth herein.

45. In response to paragraph 45 of the Complaint, Experian is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, on that basis, denies, generally and specifically, each and every allegation contained therein.

46. In response to paragraph 46 of the Complaint, Experian is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, on that basis, denies, generally and specifically, each and every allegation contained therein.

47. In response to paragraph 47 of the Complaint, Experian is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, on that basis, denies, generally and specifically, each and every allegation contained therein.

48. In response to paragraph 48 of the Complaint, Experian admits that the allegations contained therein appear to set forth a portion of the federal Fair Credit Reporting Act. Experian affirmatively states that the Fair Credit Reporting Act speaks for itself and, on that basis, denies any allegations of paragraph 48 inconsistent therewith.

49. In response to paragraph 49 of the Complaint, Experian is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, on that basis, denies, generally and specifically, each and every allegation contained therein.

50. In response to paragraph 50 of the Complaint, Experian is without knowledge or information sufficient to form a belief as to the truth of the

allegations contained therein and, on that basis, denies, generally and specifically, each and every allegation contained therein.

51. In response to paragraph 51 of the Complaint, Experian denies, generally and specifically, each and every allegation contained therein that relates to Experian. As to the allegations in paragraph 51 of the Complaint that relate to the other defendants, Experian does not have knowledge or information sufficient to form a belief as to the truth of those allegations and, on that basis, denies, generally and specifically, each and every remaining allegation of paragraph 51 of the Complaint. Further, Experian is without knowledge or information sufficient to form a belief as to the truth of the allegations contained within paragraphs 45-51 of the Complaint and, on that basis, denies that Plaintiff is entitled to any damages or other forms of relief set forth in the sentence beginning with "WHEREFORE" following paragraph 51, or any of its subparts 1-3.

COUNT III-VIOLATION OF GEORGIA CODE § 10-1-393, UNLAWFUL ACTS AND PRACTICES-CLAIM AGAINST ALL DEFENDANTS

52. In response to paragraph 52 of the Complaint, Experian incorporates by reference its responses to paragraphs 1 through 51 as if fully set forth herein.

53. In response to paragraph 53 of the Complaint, Experian admits that the allegations contained therein appear to set forth a portion of O.C.G.A. § 10-1-393 of Georgia's Fair Business Practices Act. Experian affirmatively states that

Georgia's Fair Business Practices Act speaks for itself and, on that basis, denies any allegations of paragraph 53 inconsistent therewith.

54. In response to paragraph 54 of the Complaint, Experian denies, generally and specifically, each and every allegation contained therein that relates to Experian. As to the allegations in paragraph 54 of the Complaint that relate to the other defendants, Experian does not have knowledge or information sufficient to form a belief as to the truth of those allegations and, on that basis, denies, generally and specifically, each and every remaining allegation of paragraph 54 of the Complaint. Further, Experian denies that Plaintiff is entitled to any damages or other forms of relief as it relates to Experian set forth in the sentence beginning with "WHEREFORE" following paragraph 54, or any of its subparts 1-3. As to the allegations and requests for relief and damages that relate to the other defendants, Experian does not have knowledge or information sufficient to form a belief as to the truth of those allegations and corresponding requests for relief and, on that basis, denies, generally and specifically, each and every remaining allegation and request for relief contained within the sentence beginning with "Wherefore" following paragraph 54, or any of its subparts 1-3 in the Complaint.

JURY DEMAND

Experian admits that Plaintiff has requested a trial by jury. Experian states that this is a legal conclusion which is not subject to denial or admission.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

The Complaint herein, and each cause of action thereof, fails to set forth facts sufficient to state a claim upon which relief may be granted against Experian and further fails to state facts sufficient to entitle Plaintiff to the relief sought, or to any other relief whatsoever from Experian.

SECOND AFFIRMATIVE DEFENSE

All claims against Experian are barred by the qualified immunity of 15 U.S.C. § 1681h(e).

THIRD AFFIRMATIVE DEFENSE

All claims against Experian are barred because all information Experian communicated to any third person regarding Plaintiff was true.

FOURTH AFFIRMATIVE DEFENSE

Experian is informed and believes and thereon alleges that any purported damages allegedly suffered by Plaintiff are the results of the acts or omissions of third persons over whom Experian had neither control nor responsibility.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff has failed to mitigate his damages.

SIXTH AFFIRMATIVE DEFENSE

Any damages which Plaintiff may have suffered, which Experian continues to deny, were the direct and proximate result of the conduct of Plaintiff. Therefore, Plaintiff is estopped and barred from recovery of any damages.

SEVENTH AFFIRMATIVE DEFENSE

The Complaint, and each claim for relief therein that seeks equitable relief, is barred by the doctrine of unclean hands.

EIGHTH AFFIRMATIVE DEFENSE

Experian is informed and believes and thereon alleges that any alleged damages sustained by Plaintiff were, at least in part, caused by the actions of Plaintiff himself and resulted from Plaintiff's own negligence which equaled or exceeded any alleged negligence or wrongdoing by Experian.

NINTH AFFIRMATIVE DEFENSE

Experian alleges that all claims for relief in the Complaint herein are barred by the applicable statutes of limitation, including but not limited to 15 U.S.C. § 1681p and O.C.G.A. § 10-1-401.

TENTH AFFIRMATIVE DEFENSE

The Complaint and each claim for relief therein is barred by laches.

ELEVENTH AFFIRMATIVE DEFENSE

Experian reserves the right to assert additional affirmative defenses at such time and to such extent as warranted by discovery and the factual developments in this case.

WHEREFORE, Defendant Experian Information Solutions, Inc. prays as follows:

- (1) That Plaintiff take nothing by virtue of the Complaint herein and that this action be dismissed in its entirety;
- (2) For costs of suit and attorneys' fees herein incurred; and
- (3) For such other and further relief as the Court may deem just and proper.

Dated: July 7, 2014

Respectfully submitted,

s/ Natalie A. Williams

Natalie A. Williams

Georgia Bar No.: 622660

JONES DAY

1420 Peachtree Street, N.E.

Suite 800

Atlanta, GA 30309

Tel: (404) 581-3939

Fax: (404) 581-8330

nwilliams@jonesday.com

Attorney for Defendant

Experian Information Solutions, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on July 7, 2014, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on the persons listed below via transmission of Notices of Electronic Filing generated by CM/ECF and via mail by the United States Postal Service.

Shimshon Wexler
1003 Briarvista Way
Atlanta, GA 30329

Plaintiff

s/Natalie A. Williams
*Attorney for Defendant
Experian Information
Solutions, Inc.*

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that the foregoing document has been prepared in accordance with the font type and margin requirements of Local Rule 5.1 of the Northern District of Georgia, using a font type of Times New Roman and a point size of 14.

s/Natalie A. Williams

*Attorney for Defendant
Experian Information Solutions, Inc.*